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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re DARIEL A., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. DARIEL A., Defendant and Appellant.	A100685 (Alameda County Super. Ct. No. J185609)

Following a contested jurisdictional hearing, the Alameda County juvenile court found true an allegation that Dariel A. (appellant), a minor, attempted to commit a robbery on July 26, 2002. Although the juvenile court expressly found that the prosecution proved the allegation beyond a reasonable doubt, appellant contends that the court's remarks when announcing its findings demonstrate that the court, in fact, harbored reasonable doubt about his intent to *permanently* deprive his victim of his property. Appellant reasons that the court applied the wrong standard of proof in finding the allegation true and that the court's error mandates reversal of the jurisdictional order entered on August 20, 2002, and the dispositional order entered on September 30, 2002.[1] We affirm.

[1] At the dispositional hearing, the court declared appellant to be a ward of the court and ordered him to reside at his parents' home under the supervision of the probation department.

I. FACTS

A. *Jurisdictional Hearing*

At the August 20, 2002, jurisdictional hearing,[2] Richard B. testified that on July 26, 2002, he was in possession of a "go-ped," a motorized scooter. At approximately 5:15 p.m., he was preparing to cross the street in front of 15125 Hesperian Boulevard in San Leandro. As he waited at the corner for the light to change, appellant and Lester I. approached him. The two young men stood on either side of him. They asked him how fast his go-ped was and if they could ride it. They then told him to get off the go-ped. Lester grabbed the neck of the go-ped, and appellant grabbed Richard's arm and tried to pull him away from the scooter. Richard pushed appellant away and swung at Lester. As appellant fell away from Richard, appellant grabbed a bag containing a hat and shirt that Richard had been carrying. Richard pulled the bag away from appellant. Richard then kick-started the go-ped and crossed the street against the red light in order to escape from Lester and appellant.

As Richard crossed the street, Lester or appellant whistled and some other young men came running from the direction of a nearby KFC restaurant. Richard was frightened as he saw the group running toward him. He proceeded into a mall and entered the first store he came upon—a women's clothing store—with the intention of asking someone to call the police. The store manager called the police, and Richard talked to them on the phone. While on the phone, he saw a total of between eight and ten people, including Lester and appellant, looking into stores in the mall. At one point, appellant entered the store and asked if a "tall, white kid" had come into the store, saying he needed to talk to him. The store manager asked appellant to leave because a woman was trying on lingerie and locked the door after appellant left. After she did so, appellant and one of the other young men came back and rattled the door, trying to get in the store. They eventually left without further incident.

The store manager testified that she was working in the store on the afternoon of July 26, 2002, when Richard entered. Richard appeared excited and asked if someone could call the police because someone had tried to rob him. While Richard was talking to the police,

[2] The court conducted a joint jurisdictional hearing involving appellant and Lester I., another minor, who was also alleged to have attempted to rob the same victim, Richard B.

the manager saw a number of boys going into other stores in the mall, apparently looking for him. She had Richard hide behind a counter. Appellant entered the store and said first that he was looking for someone, then that he was looking for something for his mother. The manager told him that there was "no one in there or anything that he was looking for" and he left. The manager then used a magnetic lock system located behind the counter to lock the front door. Appellant and another young man came to the door; the other young man pulled on the door to try to open it. Lopez told them that they could not come in, and they walked away, looking into the store's front window as they moved off. At that point, Richard was out of sight, as Lopez had hidden him on a chair in the back of the apparel department.

Appellant testified that he, Lester and several co-workers with whom he sold magazine subscriptions door-to-door were eating lunch at KFC, when he saw Richard. Appellant and Lester went to talk to him. Appellant asked Richard how fast his go-ped could go, placed his hand on the handlebar and asked if he could ride it. Richard said, " '[n]o,' " and "just took off." Appellant indicated that he and Lester were "just going to ride the scooter" but that Richard thought they were going to steal it. After Richard went across the street, appellant and Lester went back to the KFC and retrieved Lester's scooter. They then rode Lester's scooter around the mall parking lot. They never saw Richard again, although appellant admitted going into the women's clothing store where Richard was hiding to look for him. Appellant's mother testified that, as of July 26, 2002, he owned a motorized scooter.

B. *Findings*

Following argument, the court announced its findings: "It seems clear to me that these boys tried to take the bike or scooter away from Richard [B.] I just don't see really any doubt about that. And when they failed to get [it] away from him at the corner, and he left off with it, they went further and went after him. The only thing that's given me the slightest intent (*sic*) is to permanently deprive, [appellant] has said that scooters are hot items; and, obviously, it wouldn't hurt to have two rather than one.

"I don't find it persuasive that each of these boys did or did not have a scooter already. And I think that it has a lot to do with it. The only question is whether they were

doing this just to have fun in the parking lot and give it back, or were they intending to keep it? And that's the only - -

"I think, let me be clear for the record, that [Richard's] testimony is essentially corroborated by the independent witness, [the manager] from the store, who testified herself to, at least, [appellant's] efforts to find [Richard] and the scooter and to pursue the matter further. And I don't think that it stretches the imagination to say that [appellant] was just doing it to have a friendly little race to see who was faster.

"Like I said, the only question in my mind is the question of what the ultimate intent was. And I think the evidence is sufficient to find that it's established beyond a reasonable doubt that they did intend to and attempted to rob [Richard] and deprive him permanently of the scooter."

II. DISCUSSION

"Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (Pen. Code, § 211.) "[T]he felonious intent requisite to robbery is the same intent common to those offenses that, like larceny, are grouped in the Penal Code designation of 'theft.' " (*People v. Butler* (1967) 65 Cal.2d 569, 573, fn. omitted, overruled on other grounds in *People v. Tufunga* (1999) 21 Cal.4th 935, 956.) The perpetrator of a robbery must intend to permanently deprive the possessor of his or her property. (*People v. Butler, supra,* 65 Cal.2d at p. 573.; see also *People v. Avery* (2002) 27 Cal.4th 49, 58 [requirement of intent to deprive another of property permanently may be "satisfied by the intent to deprive temporarily but for an unreasonable time so as to deprive [the victim] of a major portion of its value or enjoyment"].) To establish that a defendant has attempted to commit a robbery, the prosecution must prove that he or she had the specific intent to commit that crime. (*People v. Toledo* (2001) 26 Cal.4th 221, 229.)

Appellant calls our attention to the court's discussion of the evidence just prior to announcing its conclusion in the course of which the court indicated that the only question was whether appellant—and Lester—intended to keep the go-ped or give it back after having fun with it in the parking lot. Appellant focuses on the court's statement that it did not "think that it stretches the imagination to say that [appellant] was just doing it to have a

friendly little race to see who was faster." Appellant contends that the court's remarks indicate that it not only had doubts about appellant's intent to deprive Richard of the go-ped permanently but that its doubts were reasonable ones. Appellant concludes that in "specifically expressing a reasonable doubt under the law on the issue of [his] intent to permanently deprive Richard of the go-ped, but still entering a finding that element was established beyond a reasonable doubt, the court clearly applied an incorrect standard on the issue of proof beyond a reasonable doubt."

In analyzing appellant's claim of error, we begin with the presumption that the court has properly performed its judicial duty. (Evid. Code, § 664; *People v. Coddington* (2000) 23 Cal.4th 529, 644, overruled on other grounds in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.) Thus, we presume that the trial court "[knew] and [applied] the correct statutory and case law [citation]." (*People v. Coddington, supra,* 23 Cal.4th at p. 644.) In addition, we presume that the trial court applied the proper burden of proof in resolving a case tried to the court. (*Ross v. Superior Court* (1977) 19 Cal.3d 899, 913-914.)

As a general rule, "statements made by the trial court as to its reasoning are not reviewable." (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1440.) However, an "oral opinion of the trial court may be used in interpreting the court's action in its decision of the case if it *unambiguously* discloses the mental processes of the trial [court] in reaching [its] conclusion. [Citation.]" (*People v. Butcher* (1986) 185 Cal.App.3d 929, 936, italics added.)

Here, the record establishes that the court knew the proper burden of proof, as evidenced by its statement that "the evidence is sufficient to find that it's established beyond a reasonable doubt that [appellant] did intend to and attempted to rob Richard [B.] and deprive him permanently of the scooter." The only question is whether the court properly applied that burden of proof in finding that appellant attempted to rob Richard.

The court's remark relied on by appellant must be considered in the context of the court's other remarks on the issue of appellant's intent. (*People v. Cartier* (1960) 54 Cal.2d 300, 313 [when court's "statements as a whole disclose a correct concept of the law and its application, no secondary remarks should be deemed to impeach [its] determination"].) By the time it made the remark in question, the court had already stated that "[i]t seems clear to me that [appellant] tried to take the [go-ped] away from Richard [B.] . . . [and] when [he]

failed to get [it] away from him at the corner . . . [he] went further and went after him" and that the victim's "testimony is essentially corroborated by the independent witness . . . from the store, who testified herself to . . . [appellant's] efforts to . . . pursue the matter further." In addition, the court indicated that it was not persuaded by the argument that appellant's already having one motorized scooter precluded his wanting to have a second one. The court's statements, taken as a whole, establish that, while the court considered the *possibility* that appellant initially approached Richard with the idea of only using the go-ped for a race and returning it, appellant's subsequent actions led the court to *conclude* that he acted with the intent to permanently deprive Richard of the scooter. In any event, the court's statement about appellant's intended use for the go-ped does not constitute an unambiguous declaration that the court had a reasonable doubt about appellant's intent to deprive Richard of the scooter on a permanent basis. (Cf. *People v. Butcher, supra,* 185 Cal.App.3d at p. 936.) Accordingly, we may properly presume that the court knew and applied the correct law in finding true beyond a reasonable doubt the allegation that appellant attempted to rob Richard. (Cf. *People v. Coddington, supra,* 23 Cal.4th at p. 644; *Ross v. Superior Court, supra,* 19 Cal.3d at pp. 913-914.)

III. DISPOSITION

The jurisdictional order of August 20, 2002, and the dispositional order of September 30, 2002, are affirmed.

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McGuiness, P.J.

We concur:

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Parrilli, J.

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Pollak, J.